No. 86-341

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

FORT HALIFAX PACKING COMPANY, INC.

Appellant

—v.—

MARVIN W. EWING, Director Bureau of Labor Standards, Department of Labor

Appellee

and

FORT HALIFAX PACKING COMPANY, INC.

Appellant

—v.—

RAYMOND BOURGOIN, *et al.*

Appellees

ON APPEAL FROM THE MAINE SUPREME JUDICIAL COURT

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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In accordance with Rule 28.1 of the Rules of this Court, Fort Halifax Packing Company ("Fort Halifax") states that on September 29, 1986, Hudson Foods, Inc., a Delaware corporation with a Rogers, Arkansas headquarters, purchased all of the outstanding and issued stock of Fort Halifax's parent, Corbett Enterprises, Inc., a Delaware corporation.

TABLE OF AUTHORITIES

ARGUMENT

1. Erisa Preempts the Maine Severance Pay Statute

There is no dispute here that severance pay is an "employee benefit" within ERISA's contemplation. Nor can it be questioned that the Maine severance pay statute requires certain employers to distribute this ERISA benefit according to a "plan": either by statutory formula or by a privately established substitute. These facts alone dictate the unassailable conclusion that ERISA preempts the Maine severance pay statute because it has "a connection with or reference to" employee benefit plans. *See Shaw* v. *Delta Air Lines Inc.*, 463 U.S. 85, 98 (1983).

This appeal presents a substantial question of federal law and merits plenary review because the Maine Supreme Judicial Court sought to interpose a heretofore unrecognized "safe harbor" from ERISA preemption for state-imposed ERISA benefits. Likewise, the State of Maine argues that the severance pay statute is saved from ERISA preemption because the statute itself "is not a private employee benefit plan established by an employer or union." Motion to Dismiss or Affirm at 8. This argument is premised upon the supposition that ERISA preempts only those plans whose terms have been voluntarily established by private parties. *Standard Oil Co. of California* v. *Agsalud*, 663 F.2d 760 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 801 (1981), disposed of this faulty supposition.

The appellee's attempt to distinguish *Agsalud* by suggesing that there is no preemption where the state statute does not affect pre-existing employee benefit plans (see Motion to Dismiss or Affirm at 10-11) fails because the *Agsalud* holding is not limited to the imposition of additional requirements upon existing plans. In *Agsalud*, the Hawaii statute was preempted as to all employers, regardless of whether they had existing plans. Moreover, appellee's claim to the contrary cannot be reconciled with Congress's aim "to occupy fully the field of employee benefit plans." *Gilbert* v. *Burlington Industries, Inc.*, 765 F.2d 320, 326 (2d Cir. 1985), *aff'd mem.*, 54 U.S.L.W.

3836 (Sup. Ct. June 23, 1986). The State of Maine may no more impose severance pay upon employers without preexisting severance pay plans than it might mandate that employers without pension plans pay pension benefits. The states do not have the authority to regulate the distribution of ERISA benefits.

Even if there were a valid distinction between statutorily-imposed ERISA benefits and those provided by private contract, Maine's position would have no merit. Whether or not the Maine severance pay statute effectively requires employers to establish a severance pay plan as Fort Halifax contends, ERISA preempts the statute because it "relates to" employee benefit plans. The relationship between the state statute and employee benefit plans is an inverse, one-to-one relationship: an employer may only deviate from the statutory benefits if it establishes an employee benefit plan that includes a severance pay provision.[1] One could hardly posit a statute with a clearer "connection with or reference to" employee benefit plans.

This Court's holdings in *Gilbert* and *Holland* v. *Burlington Industries, Inc.*, 772 F.2d 1140 (4th Cir. 1985), *aff'd mem. sub nom. Brooks* v. *Burlington Industries, Inc.*, 54 U.S.L.W. 3836 (Sup. Ct. June 23, 1986), belie the State of Maine's additional claim that the Maine statute does not relate to an employee benefit plan because the statute "imposes only a one-time obligation in the event of a plant shutdown." Motion to Dismiss or Affirm at 8-11. By their very nature severance pay plans typically involve one-time, lump sum payments; nevertheless, as *Gilbert* and *Holland* hold, they are ERISA plans. There is no requirement that

[1]The State of Maine suggests that the Maine statute does not impose upon employers the obligation to distribute severance benefits because "employers can also contract with their employees to eliminate severance pay entirely." Motion to Dismiss or Affirm at 8 n.5. This disingenuous interpretation does not comport with the statute's express language. See Appendix at A48, ¶3B. Moreover, even if this were a fair reading of the statute, it nevertheless would impose the establishment of an employee benefit plan—albeit one that may possibly confer a zero benefit.

a plan "create an on-going program of benefits" (*id.*) in order to fall within ERISA's scope, and *Martori Bros. Distributors* v. *Jones-Massengale*, 781 F.2d 1349 (9th Cir. 1986) does not hold otherwise. There, the court explicitly recognized that ERISA preempts state laws that regulate the *type* of benefits covered by ERISA (781 F.2d at 1357), but held that there was no regulation of an ERISA benefit involved in a state labor relations board's "make whole" remedy for an unfair labor practice. *Id.* at 1358. Here, in contrast, the Maine statute undeniably mandates payment of an ERISA benefit.

In sum, in enacting the comprehensive regulation of employee benefit plans, the United States Congress chose not to mandate the payment of benefits within ERISA's scope. The State of Maine cannot impose upon employers that which Congress left voluntary.

2. The NLRA Preempts the Maine Severance Pay Statute

The parties to this appeal agree that the proper interpretation of *Metropolitan Life Insurance Co.* v. *Massachusetts*, 105 S. Ct. 2380 (1985), resolves the NLRA preemption issue in this case. Fort Halifax reads *Metropolitan* as an exceptional case in the long line of *Machinists* NLRA preemption cases, turning principally upon the following factors: i) the Massachusetts statute established a *minimum* standard; ii) the state imposed the standard upon insurers rather than directly upon employers; iii) employers could avoid the standard by declining to offer insurance coverage or by self insuring; and iv) the statute involved insurance, a traditional bastion of state regulation. The State of Maine, on the other hand, reads *Metropolitan* not as an exception but as the case that swallows the *Machinists* rule. This conflicting reading of *Metropolitan* alone suggests the need for plenary review.

Moreover, whatever the ultimate import of *Metropolitan* may be, it cannot be seriously contended that it "foreclose[s]" this

appeal. See Motion to Dismiss or Affirm at 13. The fundamental and critical distinction between this case and *Metropolitan* is that the Maine statute does not establish the requisite minimum standard that saved the Massachusetts statute. Even the appellee concedes that employers may contract to provide for less than the benefit provided in the statute. See Motion to Dismiss or Affirm at 8 n.5, 13-14. In the absence of a true minimum standard, *Metropolitan* cannot support the State of Maine's position.

Conclusion

For the foregoing reasons, and the reasons stated in the Jurisdictional Statement, we respectfully request that the Court note probable jurisdiction of this appeal.

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